

REMARKS

In this submission, the above listing of the claims supersedes any previous listing. Favorable reexamination and reconsideration are respectfully requested in view of the preceding amendments and the following remarks.

In this submission the claims have been amended to clarify the subject matter for which patent protection is sought and to render the claims both clear and distinct. The proposed amendment are therefore deemed such as to overcome the rejections raised under 35 USC § 112 second paragraph.

In connection with claim 45, as will be noted, this claim has been amended to assume independent form and to included (in brackets) high stringency conditions as disclosed in a paper by Sambrook and Russell "Molecular Cloning, A Laboratory Manual", Protocol 32, which is referred to in the specification at page 4. Support for this amendment is therefore provided in the originally filed specification.

Copies of the relevant pages of the above mentioned paper are submitted with this response, wherein the relevant passages have been underlined/sidelined. Similar or identical conditions can be found disclosed in, by way of example, the claims of U.S. patents US 7,335,757 B, US 7,332,312 B, US 7,220,564 B and US 7,232,672 B.

In this connection with this issue, it is again submitted that the term "hybridization under stringent conditions" is well known in the art, and therefore the scope of the claims can readily determined by one of skill in the art to which the invention pertains.

Again attention is called to MPEP 2164.01 wherein it is stated that:

A patent need not teach, and preferably omits, what is well known in the art. *In re Buchner*, 929 F.2d 660, 661, 18 USPQ2d 1331, 1332 (Fed. Cir. 1991); *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384, 231 USPQ 81, 94 (Fed. Cir. 1986), cert. denied, 480 U.S. 947 (1987); and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1463, 221 USPQ 481, 489 (Fed. Cir. 1984). (Emphasis added)

In connection with claim 46, re the 70% homology limitation introduced into this claim, it is submitted that US 6,312,933 B disclosed such a limitation in connection with claim 4 of this

patent. It is submitted that claim 3 of this patent also includes the limitations "stringent conditions" without further definition in the claim. It is submitted that inasmuch as the patent office is not in business of issuing defective patents, the claims of this issued patent provide a basis/precedent for the use of the above mentioned terms in this instance.

The rejection of claims 53-55 under 35 USC § 102(b) as being anticipated by Kojima et al. is respectfully submitted as being rendered moot by their cancellation.

All objections and rejections having been addressed, it is respectfully submitted that the present application should be in condition for allowance and a Notice to that effect is earnestly solicited.

Early issuance of a Notice of Allowance is courteously solicited.

The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,
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